IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 7461 of 2006

AATMA RAM AGARWAL & ANR.
V/S
STATE & ORS.

Mr. BL PUROHIT & Mr. NS ACHARYA , for the appellant / petitioner

Date of Order : 11.1.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner seeks to challenge the order passed by the two learned courts below granting and upholding temporary injunction restraining the petitioner from raising any construction, and also restraining Municipality from granting any permission about raising construction.

It is contended by the learned counsel that the petitioner had obtained permission for raising construction, and thereafter when he started raising construction the plaintiff objected, interalia on the ground, that the construction is in violation of the sanctioned set backs, and filed a regular suit against the petitioner being Suit No. 235/2004. It was alleged in the suit, that Kanta Kathuria Colony was approved and different plots were earmarked, prescribing set backs, and the plots

were sold with the condition of set backs. However, the defendant no.1 purchased two plots with the condition, for residential purpose, and the plaintiff also purchased two plots for residential purpose, but then, the defendants no. 1 and 2 when submitted the plan for raising construction it ostensibly looked a plan for residential house, but on the site a cinema hall and commercial complex is being constructed, and the conditions of set backs are not being followed, which is adversely affecting the civic rights of the plaintiff. Protests were raised before the Municipal Authorities, in vain. It was also alleged that the defendant nos. 1 and 2 have applied for conversion of the plot for commercial purposes, which proceedings are pending, and according to the plaintiff such regularisation is not permissible. Contesting defendant contended, that Kanta Kathuria Colony Scheme was prepared by Gram Panchayat Shivbari, and the plots were sold, and that in the Patta and plan issued in favour of defendant no. 2, there is no provision for set back. It was also contended, that even if any construction is being raised in violation of bye-laws there is provision for compromise and compound. Various other contentions were also raised, including the one that after giving permission the committee retains no power thereafter. The learned trial court noticed that the construction was compounded by the compounding committee which compounding was challenged by the plaintiff by way of writ petition before this Court, which writ was decided on

25.4.2005, leaving it open to the Civil Court to examine the case of the plaintiff. This order was affirmed in the Division Bench also, and since the compounding has been effected during pendency of the suit it could be challenged in the suit itself. Then, the operative part of the order passed in the writ petition was quoted, and it was considered, that the stand of the defendant is self contradictory, inasmuch as a complaint was lodged regarding offending construction on 11.3.2004, and the matter was compounded without giving notice to the plaintiff, and now the defendant seeks to fall back on the Patta granted by the Gram Panchayat, to contend that there is no provision for set back. Thus, the learned trial court found, that there are serious questions involved in the matter which are required to be gone into, and thus the plaintiff has prima facie case. Then, the aspects of balance of convenience, and irreparable loss were also examined interalia on the anvil of larger peace and convenience of the persons who live in the colony, and interim injunction was granted. This order was affirmed in appeal.

It was contended by the learned counsel for the petitioner that there are no bye-laws in existence in the Municipality Bikaner, and that when the matter is compounded by the Municipality, in view of the various judgments cited by the learned counsel being Muni Suvrat-Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad & Ors.,

reported in (2006) 8 SCC 590, Raman & Raman Ltd. Vs. State of Madras & Anr., reported in AIR 1956 SC 463 and Syed Muzaffar Ali & Ors. Vs. Municipal Corporation of Delhi reported in 1995 Supp(4) SCC 426, the order of compounding is not justiciable, and the Court cannot interfere in the compounding, and therefore, the learned courts below were in error in granting injunction.

In my view, the judgment of this Court in the Writ Petition of the plaintiff, does completely answer the contention of the learned counsel for the petitioner, inasmuch as the learned trial court was left free to examine the case of the plaintiff on merits, and also to examine the order which has been passed for compounding of the construction of the petitioner, by not taking the order of compounding as a last word. Admittedly, this order has been affirmed by the Division Bench also. On the face of this order, I am not in a position to accept the contention, that the order of compounding cannot be gone into by the Civil Court.

That being the position if the learned courts below have only maintained status quo, more particularly when it is not shown by the learned counsel for the petitioner, that the construction intended to be raised, is not in violation of the permission granted by the competent local body. It is required to be grasped that by this

petition, the petitioner, in substance, seeks a direction to allow him to raise construction in violation of the permission granted by the local authority, interalia on the strength of any compounding having been made, or the offending construction being permissible to be compounded. It is established law that Article 226 jurisdiction cannot be invoked for the purpose of bringing about any legality. In absence of it being the case of the petitioner, that he is being restrained from raising construction even in accordance with the permission granted by the competent legal authority, I do not find any sufficient ground to invoke my 226 jurisdiction in favour of the petitioner.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/